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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,244	11/25/2003	Naohiro Takeshita	10517/192	4342
23838 7590 09/17/2009 KENYON & KENYON LLP 1500 K STREET N.W. SUITE 700 WASHINGTON, DC 20005				
EXAMINER				
WALKER, KEITH D				
ART UNIT		PAPER NUMBER		
1795				
MAIL DATE		DELIVERY MODE		
09/17/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/720,244

Applicant(s)

TAKESHITA ET AL.

Examiner

KEITH WALKER

Art Unit

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 September 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 7, 10, 12, 13 and 22 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1, 7, 10, 12, 13 and 22 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

Claim 2 is cancelled and claims 1, 7, 10, 12, 13 and 22 are pending examination as discussed below.

Information Disclosure Statement

The information disclosure statements filed on 7/7/09 and 9/4/09 have been placed in the application file and the information referred to therein has been considered as to the merits.

Claim Objections

Applicant is advised that should claim 1 be found allowable, claim 22 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1, 2, 7 & 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP Publication 63-119166 (Sakai) in view of US 7,063,905 (Menon).

Sakai teaches a fuel cell stack with a supply port and discharge port provided at the same end of the stack (Figs. 3 & 4). The separator plates have a plurality of grooves with a plurality of ribs between (Abstract). The pressure loss of a first cell is smaller than that of a second cell and as the plates have different configurations, the water draining characteristics are different. The cell with the smaller pressure loss is disposed in a vicinity of a second end portion of the cell stack (Abstract).

Regarding claim 7, this limitation is drawn to a method of operating or intended use of the fuel cell and while intended use recitations and other types of functional language are not entirely disregarded, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP § 2114). The manner of operating the device does not differentiate an apparatus claim from the prior art.

Sakai is silent to the first block with the smaller pressure loss and the larger gas passages being disposed in a vicinity of a second end portion of the fuel cell stack. Sakai is also silent to the distribution of the oxidant gas to the fuel cell stack.

Menon teaches a fuel cell stack that operates by supplying oxidant gas to a first end section and an oxidant gas exhaust from the same first end section. The fuel gas is

supplied to the fuel cell from a second end section and exhausted from the same second end section (Fig. 1; 3:5-4:30). Menon teaches supplying the fuel gas reactant in the same manner as Sakai and further teaches how to supply the oxidant reactant gas to the fuel cell system. The second end portion is supplied with the fuel gas, the same as taught by Sakai, and this second end portion has the first block configuration (smaller pressure loss and larger gas passages).

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the fuel cell stack of Sakai with the oxidant supply passage of Menon so as to provide and understand how to provide oxidant to the fuel cell stack. Combining prior art elements according to known methods to yield predictable results and using known techniques to improve similar devices in the same way are considered obvious to one of ordinary skill in the art (KSR, MPEP 2141 (III)).

2. Claims 1, 2, 7, 10, 12, 13 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-357869 (Hamada) in view of JP Publication 63-119166 (Sakai).

The teachings of Sakai as discussed above are incorporated herein.

Hamada teaches a solid high polymer type fuel cell stack in which performance of unit cells at the two ends of the stack are prevented from dropping. The fuel cell stack is structured such that a plurality of unit cells are laid one over another according to one of the following: 1) the water repellency of the cathode gas diffusion layer of each unit cell located at the stack ends is made lower than that of the unit cells located

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elsewhere in the stack; 2) the gas permeability of the cathode gas diffusion layer of each unit cell located at the ends is made higher than that of the unit cells located elsewhere in the stack; 3) the specific surface area of the carbon material of the mixture layer in the cathode of each unit cell located at the ends is made greater than that of the unit cells located elsewhere in the stack; and, 4) the pressure loss in the cathode side gas passage of each unit cell located at the ends is made smaller than that of the unit cells located elsewhere in the stack (abstract). The depth of a separator of a cell unit located at an end of the stack is increased by 10% compared with a gas passageway of a single cell located in other parts of the stack (0031). Reactant gas is supplied from the clamping plates located at both ends of the stack (0013).

Regarding claim 7, this limitation is drawn to a method of operating or intended use of the fuel cell and while intended use recitations and other types of functional language are not entirely disregarded, the intended use must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function (MPEP § 2114). The manner of operating the device does not differentiate an apparatus claim from the prior art.

Hamada is silent to the discharge port being located on the same side as the supply port. However, it is well known in the art to locate the inlet and the outlet ports on the same side of the fuel cell. Locating the ports on the same side is a design

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consideration and would allow a fuel cell to fit into spaces while allowing all the components to be accessible on one side. Combining prior art elements according to known methods to yield predictable results and using known techniques to improve similar devices in the same way are considered obvious to one of ordinary skill in the art (KSR, MPEP 2141 (III)).

Hamada is silent to the cross-sectional area of a gas paths formed between the ribs being larger in the first cell block than the second cell block.

Sakai teaches a gas path for a separator plate having plurality of ribs between grooves where the pitch between the ribs is larger for a first plate than a second plate (Abstract). This configuration improves reliability and performance of the fuel cell by increasing the cross-sectional area of the fuel gas passages.

Therefore it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to modify the separator path of Hamada with the different pitched paths of Sakai to improve the fuel cell operation by increasing the cross-sectional area of the fuel gas passages.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection based on the submitted IDS.

Applicant argues "neither Hamada nor Sakai contemplate a cell block having a larger cross-sectional area of gas paths formed between the ribs disposed in a vicinity of a second end portion of the fuel cell stack according to the combination of features

recited in claims 1 and 22, as set forth above.” As taught by Hamada the end of the fuel cell has a separator plate with a smaller pressure loss from that of the other cell blocks (second cell block). Sakai teaches creating a separator plate with a smaller pressure loss by increasing the cross-sectional area of the gas paths between the ribs. Therefore, it would be obvious to use the method taught by Sakai to create the smaller pressure loss in the first block taught by Hamada. The first block is taught by Hamada as being disposed in the vicinity of a second end portion of the fuel cell stack.

Conclusion

Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 7/7/09 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KEITH WALKER whose telephone number is (571)272-3458. The examiner can normally be reached on Mon. - Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

K. Walker

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795